

By: Buckingham

S.B. No. 1916

A BILL TO BE ENTITLED

AN ACT

relating to savings and loan associations, savings banks, residential mortgage loan originators and servicers, and other persons or entities under the regulatory jurisdiction of the Department of Savings and Mortgage Lending and the savings and mortgage lending commissioner; creating an offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 62.001(a), (b), and (d), Finance Code, are amended to read as follows:

(a) Five or more residents of this state may apply to form and incorporate an association by submitting to the commissioner an application and the filing fee.

(b) An application must contain:

(1) two copies of the association's certificate of formation [~~articles of incorporation~~] identifying:

(A) the name of the association;

(B) the location of the principal office; and

(C) the names and addresses of the initial directors;

(2) two copies of the association's bylaws;

(3) data sufficiently detailed and comprehensive to enable the commissioner to make a determination under Section 62.007, including statements, exhibits, and maps;

(4) other information relating to the association and

its operation that the finance commission by rule requires; and

(5) financial information about each applicant, incorporator, director, or shareholder that the finance commission by rule requires.

(d) The certificate of formation [~~articles of incorporation~~] and statements of fact shall be signed and sworn to.

SECTION 2. Section 62.002(a), Finance Code, is amended to read as follows:

(a) A capital stock association's certificate of formation [~~articles of incorporation~~] must include a statement of:

(1) the aggregate number of shares of common stock that the association may issue;

(2) the par value of each share or that the shares are without par value;

(3) whether the association may issue preferred stock;

(4) the amount of stock that has been subscribed and will be paid for before the association begins business;

(5) the name and address of each subscriber and the amount subscribed by each; and

(6) the amount of paid-in surplus with which the association will begin business.

SECTION 3. Section 62.003, Finance Code, is amended to read as follows:

Sec. 62.003. ADDITIONAL INCORPORATION REQUIREMENTS FOR MUTUAL ASSOCIATION. (a) A mutual association's certificate of formation [~~articles of incorporation~~] must include a statement of the amount of savings liability of the association and the amount of

1 the expense fund with which the association will begin business.

2 (b) Before approving the certificate of formation
3 [~~articles of incorporation~~] of a mutual association, the
4 commissioner may require the association to have subscriptions for
5 an aggregate amount of savings accounts and an expense fund in an
6 aggregate amount that the commissioner, under rules of the finance
7 commission, finds is necessary for the successful operation of the
8 association.

9 SECTION 4. Sections 62.007(a) and (b), Finance Code, are
10 amended to read as follows:

11 (a) The commissioner may approve an application to
12 incorporate only if the commissioner finds that:

13 (1) the prerequisites to incorporation required by
14 this chapter are satisfied;

15 (2) the character, responsibility, and general
16 fitness of each person named in the certificate of formation
17 [~~articles of incorporation~~] command confidence and warrant belief
18 that:

19 (A) the business of the association will be
20 honestly and efficiently conducted in accordance with the intent
21 and purpose of this subtitle; and

22 (B) the association will have qualified
23 full-time management;

24 (3) there is a public need for the association;

25 (4) the volume of business in the community in which
26 the association will conduct its business indicates a profitable
27 operation is probable; and

1 (5) the operation of the association will not unduly
2 harm an existing association.

3 (b) On finding that the requirements of Subsection (a) are
4 fulfilled, the commissioner shall:

5 (1) enter an order approving the application and
6 stating the findings required by Subsection (a);

7 (2) issue under official seal a certificate of
8 incorporation;

9 (3) deliver a copy of the approved certificate of
10 formation [~~articles of incorporation~~] and bylaws to the
11 incorporators; and

12 (4) permanently retain a copy of the certificate of
13 formation [~~articles~~] and bylaws.

14 SECTION 5. The heading to Section 62.010, Finance Code, is
15 amended to read as follows:

16 Sec. 62.010. AMENDMENT OF CERTIFICATE OF FORMATION
17 [~~ARTICLES OF INCORPORATION~~] OR BYLAWS.

18 SECTION 6. Section 62.010(a), Finance Code, is amended to
19 read as follows:

20 (a) An association may amend its certificate of formation
21 [~~articles of incorporation~~] or bylaws by a resolution adopted by a
22 majority vote of those entitled to vote attending an annual meeting
23 or a special meeting called for that purpose.

24 SECTION 7. Section 62.011(a), Finance Code, is amended to
25 read as follows:

26 (a) Only with the prior approval of the commissioner may an
27 association:

1 (1) establish an office other than the principal
2 office stated in the association's certificate of formation
3 [~~articles of incorporation~~];

4 (2) move an office from its immediate vicinity; or

5 (3) change the association's name.

6 SECTION 8. Section 62.051, Finance Code, is amended to read
7 as follows:

8 Sec. 62.051. PURPOSE OF INCORPORATION. A person may apply
9 to form and incorporate an association for the purpose of:

10 (1) purchasing the assets, assuming the liabilities,
11 excluding liability to stockholders, and continuing the business of
12 an association the commissioner considers to be in an unsafe
13 condition; or

14 (2) acquiring an existing association by merger.

15 SECTION 9. Sections 62.053(a) and (e), Finance Code, are
16 amended to read as follows:

17 (a) The commissioner shall approve an application under
18 this subchapter if the commissioner finds that:

19 (1) the business of the association that is to be
20 reorganized or merged can be effectively continued under the
21 certificate of formation [~~articles of incorporation~~]; and

22 (2) the reorganization or merger is in the best
23 interest of the general public and the savers, depositors,
24 creditors, and shareholders of the association that is to be
25 reorganized or merged.

26 (e) In a merger, a shareholder of a capital stock
27 association has the same dissenter's rights as a shareholder of a

domestic business corporation under the Business Organizations Code [~~Texas Business Corporation Act~~].

SECTION 10. Section 62.156(c), Finance Code, is amended to read as follows:

(c) An association may retire or redeem preferred stock in the manner provided by:

(1) the certificate of formation [~~articles of incorporation~~]; or

(2) a resolution of the board establishing the rights and preferences relating to the stock.

SECTION 11. Sections 62.157(a) and (c), Finance Code, are amended to read as follows:

(a) The certificate of formation [~~articles of incorporation~~] may:

(1) authorize that shares of preferred stock be divided into and issued in series; and

(2) determine the rights and preferences of each series or part of a series.

(c) The certificate of formation [~~articles of incorporation~~] may authorize the board by resolution to divide classes of preferred stock into series and to determine the rights and preferences of the shares of each series. A copy of the resolution must be submitted to the commissioner before the shares may be issued. The commissioner shall file the resolution in the commissioner's office if the resolution conforms to this subtitle. After the resolution is filed, it is considered an amendment of the association's certificate of formation [~~articles of~~]

1 ~~incorporation~~].

2 SECTION 12. Section 62.252(b), Finance Code, is amended to
3 read as follows:

4 (b) The directors shall execute ~~[two copies of]~~ the
5 application required by Section 62.251.

6 SECTION 13. Section 62.351(c), Finance Code, is amended to
7 read as follows:

8 (c) A shareholder of a capital stock association has the
9 same dissenter's rights as a shareholder of a domestic corporation
10 under the Business Organizations Code ~~[Texas Business Corporation~~
11 ~~Act]~~.

12 SECTION 14. Section 62.405(c), Finance Code, is amended to
13 read as follows:

14 (c) A surviving association that is a domestic association
15 shall operate under:

16 (1) the certificate of formation ~~[articles]~~ and bylaws
17 of the merging or consolidating domestic association; and

18 (2) the laws applicable to a domestic association.

19 SECTION 15. Section 62.454(b), Finance Code, is amended to
20 read as follows:

21 (b) After the merger takes effect:

22 (1) a corporation that was merged ceases to exist;

23 (2) the association assumes the rights and obligations
24 of the corporation and owns the property of the association; and

25 (3) the association's certificate of formation is
26 ~~[articles of incorporation are]~~ considered amended to the extent
27 that a change is stated in the plan of merger.

SECTION 16. Section 66.002, Finance Code, is amended to read as follows:

Sec. 66.002. ADOPTION OF RULES. The finance commission may adopt rules relating to:

(1) the minimum amounts of capital stock and paid-in surplus required for incorporation as a capital stock association;

(2) the minimum amounts of savings liability and expense funds required for incorporation as a mutual association;

(3) the fees and procedures for processing, hearing, and deciding applications filed with the commissioner or the Department of Savings and Mortgage Lending under this subtitle;

(4) the books and records that an association is required to keep and the location at which the books and records are required to be maintained;

(5) the accounting principles and practices that an association is required to observe;

(6) the conditions under which records may be copied or reproduced for permanent storage before the original records are destroyed;

(7) ~~[the form, contents, and time of publication of statements of condition;~~

~~[(8)]~~ the form and contents of annual reports and other reports that an association is required to prepare and publish or file;

(8) ~~[(9)]~~ the manner in which assets, liabilities, and transactions in general are to be described when entered in the books of an association, so that the entry accurately describes the

1 subject matter of the entry; and

2 (9) [~~(10)~~] the conditions under which the
3 commissioner may require an asset to be charged off or reserves
4 established by transfer from surplus or paid-in capital because of
5 the depreciation of or overstated value of the asset.

6 SECTION 17. Section 66.101, Finance Code, is amended to
7 read as follows:

8 Sec. 66.101. INTERVENTION FOR VIOLATIONS AND UNSAFE AND
9 UNSOUND PRACTICES. The commissioner may intervene in the affairs
10 of an association if the association or a person who participates in
11 the affairs of the association or a subsidiary of the association:

12 (1) engages in or is about to engage in an unsafe and
13 unsound practice in conducting the affairs of the association; or

14 (2) violates or is about to violate:

15 (A) the certificate of formation [~~articles of~~
16 ~~incorporation~~] or bylaws of the association;

17 (B) a law or supervisory order applicable to the
18 association; or

19 (C) a condition that the commissioner or the
20 finance commission has imposed on the association by written order
21 or agreement.

22 SECTION 18. Section 67.001(b), Finance Code, is amended to
23 read as follows:

24 (b) Subsection (a) does not prohibit activity that is not
25 considered to be transacting business in this state under Section
26 9.251, Business Organizations Code [~~Section B, Article 8.01, Texas~~
27 ~~Business Corporation Act~~].

SECTION 19. Sections 92.051(a), (b), and (d), Finance Code, are amended to read as follows:

(a) Five or more adult residents of this state may apply to form and incorporate a savings bank by submitting to the commissioner:

(1) an application to incorporate a savings bank that is:

(A) in a form specified by the commissioner; and

(B) signed by each incorporator; and

(2) the filing fee.

(b) An application must contain:

(1) two copies of the savings bank's certificate of formation [~~articles of incorporation~~] identifying:

(A) the name of the savings bank;

(B) the location of the principal office; and

(C) the names and addresses of the initial directors;

(2) two copies of the savings bank's bylaws;

(3) data sufficiently detailed and comprehensive to enable the commissioner to make findings under Section 92.058, including statements, exhibits, and maps;

(4) other information relating to the savings bank and its operation that the finance commission by rule requires; and

(5) financial information about each applicant, incorporator, director, officer, or shareholder that the finance commission by rule requires.

(d) The certificate of formation [~~articles of~~

1 ~~incorporation~~] and statements of fact must be signed and sworn to.

2 SECTION 20. Section 92.052(a), Finance Code, is amended to
3 read as follows:

4 (a) A capital stock savings bank's certificate of formation
5 ~~[articles of incorporation]~~ must include a statement of:

6 (1) the aggregate number of shares of common stock
7 that the savings bank may issue;

8 (2) the par value of each share or that the shares are
9 without par value;

10 (3) whether the savings bank may issue preferred
11 stock;

12 (4) the amount of stock that has been subscribed and
13 will be paid for before the savings bank begins business;

14 (5) the name and address of each subscriber and the
15 amount subscribed by each; and

16 (6) the amount of paid-in surplus with which the
17 savings bank will begin business.

18 SECTION 21. Section 92.053, Finance Code, is amended to
19 read as follows:

20 Sec. 92.053. ADDITIONAL REQUIREMENTS FOR MUTUAL SAVINGS
21 BANK. (a) A mutual savings bank's certificate of formation
22 ~~[articles of incorporation]~~ must include a statement of the amount
23 of deposit liability of the savings bank and the amount of the
24 expense fund with which the savings bank will begin business.

25 (b) Before approving the certificate of formation ~~[articles~~
26 ~~of incorporation]~~ of a mutual savings bank, the commissioner shall
27 require the savings bank to have subscriptions for an aggregate

1 amount of deposit accounts and an expense fund in an aggregate
2 amount the finance commission by rule establishes as necessary for
3 the successful operation of a mutual savings bank.

4 SECTION 22. Sections 92.058(b) and (c), Finance Code, are
5 amended to read as follows:

6 (b) The commissioner may approve an application to
7 incorporate only if:

8 (1) the prerequisites to incorporation required by
9 this chapter are satisfied;

10 (2) the character, responsibility, and general
11 fitness of each person named in the certificate of formation
12 [~~articles of incorporation~~] command confidence and warrant belief
13 that:

14 (A) the business of the savings bank will be
15 honestly and efficiently conducted in accordance with the intent
16 and purpose of this subtitle; and

17 (B) the savings bank will have qualified
18 full-time management;

19 (3) there is a public need for the savings bank;

20 (4) the volume of business in the community in which
21 the savings bank will conduct its business indicates a profitable
22 operation is probable; and

23 (5) the operation of the savings bank will not unduly
24 harm an existing savings bank or state or federal savings and loan
25 association.

26 (c) On finding that each requirement of Subsection (b) is
27 met, the commissioner shall:

(1) enter an order approving the application and stating the findings required by Subsection (b);

(2) issue under official seal a certificate of incorporation;

(3) deliver a copy of the approved certificate of formation [~~articles of incorporation~~] and bylaws to the incorporators; and

(4) permanently retain a copy of the certificate of formation [~~articles of incorporation~~] and bylaws.

SECTION 23. The heading to Section 92.062, Finance Code, is amended to read as follows:

Sec. 92.062. AMENDMENT OF CERTIFICATE OF FORMATION [~~ARTICLES OF INCORPORATION~~] OR BYLAWS.

SECTION 24. Section 92.062(a), Finance Code, is amended to read as follows:

(a) A savings bank may amend its certificate of formation [~~articles of incorporation~~] or bylaws by a resolution adopted by a majority vote of those entitled to vote attending an annual meeting or a special meeting called for that purpose.

SECTION 25. Section 92.063(a), Finance Code, is amended to read as follows:

(a) Only with the prior approval of the commissioner given in accordance with rules of the finance commission may a savings bank:

(1) establish an office other than the principal office stated in the savings bank's certificate of formation [~~articles of incorporation~~];

(2) move an office from its immediate vicinity; or

(3) change the savings bank's name.

SECTION 26. Section 92.101, Finance Code, is amended to read as follows:

Sec. 92.101. PURPOSE OF INCORPORATION. A person may apply to form and incorporate a savings bank for the purpose of:

(1) purchasing the assets, assuming the liabilities other than liability to shareholders, and continuing the business of a financial institution the commissioner considers to be in an unsafe condition;

(2) acquiring an existing financial institution by merger; or

(3) facilitating a reorganization or merger with or into a savings bank under rules adopted by the finance commission.

SECTION 27. Sections 92.103(a) and (e), Finance Code, are amended to read as follows:

(a) The commissioner shall approve an application under this subchapter if the commissioner finds that:

(1) the business of the financial institution that is to be reorganized or merged can be effectively continued under the certificate of formation [~~articles of incorporation~~]; and

(2) the reorganization or merger is in the best interest of the public and the savers, depositors, creditors, and shareholders of the financial institution that is to be reorganized or merged.

(e) In a merger, a shareholder of a capital stock financial institution has the same dissenter's rights as a shareholder of a

domestic business corporation under the Business Organizations Code [~~Texas Business Corporation Act~~].

SECTION 28. Section 92.152(b), Finance Code, is amended to read as follows:

(b) The members or shareholders shall elect the board by a majority vote at the annual meeting. The directors may be elected for staggered terms of longer than one year as provided by the savings bank's bylaws or certificate of formation [~~articles of incorporation~~].

SECTION 29. Section 92.158(a), Finance Code, is amended to read as follows:

(a) The voting rights of a person entitled to vote at an annual or special meeting of a savings bank are the same as those of a shareholder of a domestic business corporation under the Business Organizations Code [~~Texas Business Corporation Act~~].

SECTION 30. Section 92.209(c), Finance Code, is amended to read as follows:

(c) A savings bank may retire or redeem preferred stock in the manner provided by:

(1) the certificate of formation [~~articles of incorporation~~]; or

(2) a resolution of the board of the savings bank establishing the rights and preferences relating to the stock.

SECTION 31. Sections 92.210(a) and (c), Finance Code, are amended to read as follows:

(a) The certificate of formation [~~articles of incorporation~~] may:

(1) authorize that shares of preferred stock be divided into and issued in series; and

(2) determine the rights and preferences of each series or part of a series.

(c) The certificate of formation [~~articles of incorporation~~] may authorize the board by resolution to divide classes of preferred stock into series and to determine the rights and preferences of the shares of each series. A copy of the resolution must be submitted to the commissioner before the shares may be issued. The commissioner shall file the resolution in the commissioner's office if the resolution conforms to this subtitle. After the resolution is filed, it is considered an amendment of the savings bank's certificate of formation [~~articles of incorporation~~].

SECTION 32. Section 92.302(b), Finance Code, is amended to read as follows:

(b) The directors, or the president and secretary, shall execute [~~two copies of~~] an application for certificate of incorporation as provided by Subchapter B.

SECTION 33. Section 92.351(c), Finance Code, is amended to read as follows:

(c) A shareholder of a capital stock savings bank has the same dissenter's rights as a shareholder of a domestic corporation under the Business Organizations Code [~~Texas Business Corporation Act~~].

SECTION 34. Section 92.405(c), Finance Code, is amended to read as follows:

(c) A surviving savings bank that is a domestic savings bank shall operate under:

(1) the certificate of formation [~~articles~~] and bylaws of the merging or consolidating domestic savings bank; and

(2) the law applicable to a domestic savings bank.

SECTION 35. Section 92.454(b), Finance Code, is amended to read as follows:

(b) After the merger takes effect:

(1) a corporation that was merged ceases to exist;

(2) the savings bank assumes the rights and obligations of the corporation and owns the property of the corporation; and

(3) the savings bank's certificate of formation is [~~articles of incorporation are~~] considered amended to the extent that a change is stated in the plan of merger.

SECTION 36. Section 94.301, Finance Code, is amended to read as follows:

Sec. 94.301. AUTHORIZATION. With the prior approval [~~consent~~] of the commissioner and subject to rules adopted by the finance commission, a savings bank may invest in a subsidiary corporation created under general corporation law.

SECTION 37. Section 96.002(a), Finance Code, is amended to read as follows:

(a) The finance commission may adopt rules necessary to supervise and regulate savings banks and to protect public investment in savings banks, including rules relating to:

(1) the minimum amounts of capital required to

1 incorporate and operate as a savings bank, which may not be less
2 than the amounts required of corresponding national banks;

3 (2) the fees and procedures for processing, hearing,
4 and deciding applications filed with the commissioner or the
5 Department of Savings and Mortgage Lending under this subtitle;

6 (3) the books and records that a savings bank is
7 required to keep and the location at which the books and records are
8 required to be maintained;

9 (4) the accounting principles and practices that a
10 savings bank is required to observe;

11 (5) the conditions under which records may be copied
12 or reproduced for permanent storage before the originals are
13 destroyed;

14 (6) ~~[the form, content, and time of publication of~~
15 ~~statements of condition,~~

16 ~~[(7)]~~ the form and content of any report that a savings
17 bank is required to prepare and publish or file under this chapter;

18 (7) ~~[(8)]~~ the manner in which assets, liabilities, and
19 transactions in general are to be described when entered in the
20 books of a savings bank, so that the entry accurately describes the
21 subject matter of the entry;

22 (8) ~~[(9)]~~ the conditions under which the commissioner
23 may require an asset to be charged off or reserves established by
24 transfer from surplus or paid-in capital because of depreciation of
25 or overstated value of the asset;

26 (9) ~~[(10)]~~ the change of control of a savings bank;

27 (10) ~~[(11)]~~ the conduct, management, and operation of

1 a savings bank;

2 (11) [~~(12)~~] the withdrawable accounts, bonuses,
3 plans, and contracts for savings programs;

4 (12) [~~(13)~~] the merger, consolidation,
5 reorganization, conversion, and liquidation of a savings bank;

6 (13) [~~(14)~~] the establishment of an additional office
7 or the change of office location or name of a savings bank;

8 (14) [~~(15)~~] the requirements for a savings bank's
9 holding companies, including those relating to:

10 (A) registration and periodic reporting of a
11 holding company with the commissioner; and

12 (B) transactions between a holding company, an
13 affiliate of a holding company, or a savings bank; and

14 (15) [~~(16)~~] the powers of a savings bank to make loans
15 and investments that contain provisions reasonably necessary to
16 ensure that a loan made by a savings bank is consistent with sound
17 lending practices and that the savings bank's investment will
18 promote the purposes of this subtitle, including provisions
19 governing:

20 (A) the type of loans and the conditions under
21 which a savings bank may originate, make, or sell loans;

22 (B) the conditions under which a savings bank may
23 purchase or participate in a loan made by another lender;

24 (C) the conditions for the servicing of a loan
25 for another lender;

26 (D) the conditions under which a savings bank may
27 lend money on the security of a loan made by another person;

1 (E) the conditions under which a savings bank may
2 pledge loans held by it as collateral for borrowing by the savings
3 bank;

4 (F) the conditions under which a savings bank may
5 invest in securities and debt instruments;

6 (G) the documentation that a savings bank must
7 have in its files at the time of funding or purchase of a loan, an
8 investment, or a participation in a loan;

9 (H) the form and content of statements of
10 expenses and fees and other charges that are paid by a borrower or
11 that a borrower is obligated to pay;

12 (I) the title information that must be
13 maintained;

14 (J) the borrower's insurance coverage of
15 property securing a loan;

16 (K) an appraisal report;

17 (L) the financial statement of a borrower;

18 (M) the fees or other compensation that may be
19 paid to a person in connection with obtaining a loan for a savings
20 bank, including an officer, director, employee, affiliated person,
21 consultant, or third party;

22 (N) the conditions under which the savings bank
23 may advance money to pay a tax, assessment, insurance premium, or
24 other similar charge for the protection of the savings bank's
25 interest in property securing the savings bank's loans;

26 (O) the terms under which a savings bank may
27 acquire and deal in real property;

(P) the valuation on a savings bank's books of real property held by the savings bank;

(Q) the terms governing the investment by a savings bank in a subsidiary, the powers that may be exercised by a subsidiary, and the activities that may be engaged in by a subsidiary; and

(R) any other matter considered necessary to administer each type of transaction.

SECTION 38. Section 96.101(a), Finance Code, is amended to read as follows:

(a) The commissioner may intervene in the affairs of a savings bank if the savings bank or a person who participates in the affairs of the savings bank or a subsidiary or holding company of the savings bank:

(1) engages in or is about to engage in an unsafe and unsound practice in conducting the affairs of the savings bank; or

(2) violates or is about to violate:

(A) the certificate of formation [~~articles of incorporation~~] or bylaws of the savings bank;

(B) a law or supervisory order applicable to the savings bank; or

(C) a condition that the commissioner or the finance commission has imposed on the savings bank by written order, directive, or agreement.

SECTION 39. Section 97.052, Finance Code, is amended to read as follows:

Sec. 97.052. APPLICATION FOR APPROVAL OF REORGANIZATION.

The application for approval of reorganization must contain:

(1) a brief statement summarizing a reorganization plan;

(2) two copies of the proposed certificate of formation [~~articles of incorporation~~] of the subsidiary savings bank acknowledged by the incorporators of the subsidiary savings bank;

(3) two copies of the proposed bylaws of the savings bank;

(4) a statement that the plan of reorganization was advised, authorized, and approved by the savings bank in the manner and by the vote required by its charter and the laws of this state; and

(5) a statement of the manner of approval.

SECTION 40. Section 98.001(b), Finance Code, is amended to read as follows:

(b) Subsection (a) does not prohibit activity that is not considered to be transacting business in this state under Section 9.251, Business Organizations Code [~~Section B, Article 8.01, Texas Business Corporation Act~~].

SECTION 41. Section 119.101(c), Finance Code, is amended to read as follows:

(c) A stockholder of a capital stock savings bank has the same right to examine the relevant books and records of a savings bank as a shareholder of a business corporation under the Business Organizations Code [~~Texas Business Corporation Act~~].

SECTION 42. Section 156.004(a), Finance Code, is amended to

1 read as follows:

2 (a) At the time a residential mortgage loan ~~[an]~~ applicant
3 submits an application to a residential mortgage loan originator
4 sponsored by and conducting business for a licensed or registered
5 residential mortgage loan company under this chapter, the
6 residential mortgage loan originator shall provide to the applicant
7 a disclosure form. The form must ~~[that specifies]~~:

8 (1) include the name, address, and toll-free telephone
9 number for the department ~~[the nature of the relationship between~~
10 ~~the applicant and the residential mortgage loan originator]~~; and

11 (2) contain information on how to file a complaint or
12 recovery fund claim ~~[the duties the residential mortgage loan~~
13 ~~originator has to the applicant, and~~

14 ~~[(3) how the residential mortgage loan originator will~~
15 ~~be compensated]~~.

16 SECTION 43. Section [157.0021](#)(b), Finance Code, is amended
17 to read as follows:

18 (b) A mortgage banker that indicates in its registration
19 that it acts as a residential mortgage loan servicer shall provide
20 to the borrower of each residential mortgage loan that it services
21 and that is secured by a lien on residential real estate located in
22 this state the following notice not later than the 30th day after
23 the date the mortgage banker commences servicing the loan:

24 "COMPLAINTS REGARDING THE SERVICING OF YOUR TEXAS MORTGAGE
25 SHOULD BE SENT TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING,
26 _____ (street address of the Department
27 of Savings and Mortgage Lending). A TOLL-FREE CONSUMER HOTLINE IS

1 AVAILABLE AT _____ (telephone number of the Department of
2 Savings and Mortgage Lending's toll-free consumer hotline)."

3 SECTION 44. The heading to Subchapter C, Chapter 158,
4 Finance Code, is amended to read as follows:

5 SUBCHAPTER C. INVESTIGATIONS;[~~7~~] COMPLAINTS[~~7~~] AND ACTIONS
6 AGAINST REGISTRANT

7 SECTION 45. Section 158.101, Finance Code, is amended to
8 read as follows:

9 Sec. 158.101. DISCLOSURE STATEMENT. A registrant shall
10 provide to the borrower of each residential mortgage loan that it
11 services and that is secured by a lien on residential real estate
12 located in this state the following notice not later than the 30th
13 day after the registrant commences servicing the loan:

14 "COMPLAINTS REGARDING THE SERVICING OF YOUR TEXAS MORTGAGE
15 SHOULD BE SENT TO THE DEPARTMENT OF SAVINGS AND MORTGAGE LENDING,
16 _____ (street address of the Department
17 of Savings and Mortgage Lending). A TOLL-FREE CONSUMER HOTLINE IS
18 AVAILABLE AT _____ (telephone number of the Department of
19 Savings and Mortgage Lending's toll-free consumer hotline)."

20 SECTION 46. The heading to Section 158.102, Finance Code,
21 is amended to read as follows:

22 Sec. 158.102. INSPECTIONS; INVESTIGATIONS [~~INVESTIGATION~~
23 ~~OF COMPLAINTS AGAINST REGISTRANT~~]; SURCHARGE.

24 SECTION 47. Section 158.102, Finance Code, is amended by
25 adding Subsections (a-1), (a-2), and (e) to read as follows:

26 (a-1) The commissioner may conduct an inspection of a
27 registrant as the commissioner determines necessary to determine

1 whether the registrant is complying with this chapter and
2 applicable rules. The inspection under this subsection may include
3 an inspection of the books, records, documents, operations, and
4 facilities of the registrant.

5 (a-2) For reasonable cause, the commissioner at any time may
6 investigate a registrant to determine whether the registrant is
7 complying with this chapter and applicable rules.

8 (e) The commissioner may conduct an undercover or covert
9 investigation only if the commissioner, after due consideration of
10 the circumstances, determines that the investigation is necessary
11 to prevent immediate harm and to carry out the purposes of this
12 chapter.

13 SECTION 48. Subchapter C, Chapter 158, Finance Code, is
14 amended by adding Section 158.107 to read as follows:

15 Sec. 158.107. UNREGISTERED ACTIVITY; OFFENSE. (a) An
16 individual who is not exempt under this chapter or other applicable
17 law and who acts as a residential mortgage loan servicer without
18 first obtaining a registration as required under this chapter
19 commits an offense.

20 (b) An offense under this section is a Class B misdemeanor.
21 A second or subsequent conviction for an offense under this section
22 is a Class A misdemeanor.

23 SECTION 49. The Finance Commission of Texas shall adopt
24 rules to implement Section 156.004(a), Finance Code, as amended by
25 this Act, not later than January 1, 2018.

26 SECTION 50. Section 156.004(a), Finance Code, as amended by
27 this Act, applies only to an application for a residential mortgage

1 loan that is submitted on or after January 1, 2018. An application
2 for a residential mortgage loan that is submitted before January 1,
3 2018, is governed by the law in effect on the date the application
4 was submitted, and the former law is continued in effect for that
5 purpose.

6 SECTION 51. Section 157.0021(b), Finance Code, as amended
7 by this Act, and Section 158.101, Finance Code, as amended by this
8 Act, apply only to a residential mortgage loan that is made on or
9 after the effective date of this Act. A residential mortgage loan
10 that is made before the effective date of this Act is governed by
11 the law in effect on the date the residential mortgage loan was
12 made, and the former law is continued in effect for that purpose.

13 SECTION 52. (a) Except as otherwise provided by this
14 section, this Act takes effect September 1, 2017.

15 (b) Section 156.004(a), Finance Code, as amended by this
16 Act, takes effect January 1, 2018.